
Pete Wilson, Governor

CEQA and Archaeological Resources

CEQA Technical Advice Series



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The **CEQA Technical Advice Series** is intended to offer CEQA practitioners, particularly at the local level, concise information about some aspect of the California Environmental Quality Act. This series of occasional papers is part of OPR's public education and training program for planners, developers, and others.

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CEQA and Archaeological Resources



The California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) requires that before approving most discretionary projects the Lead Agency must identify and examine the significant adverse environmental effects which may result from that project. Where a project may adversely affect a unique archaeological resource, Section 21083.2 of the Act requires that the Lead Agency treat that effect as a significant environmental effect and prepare an environmental impact report (EIR). When an archaeological resource is listed in or eligible to be listed in the California Register of Historical

Resources, Section 21084.1 requires that any substantial adverse effect to that resource be considered a significant environmental effect.

The following advisory memo reviews the requirements of Public Resources Code Sections 21083.2 and 21084.1, and offers cities and counties suggestions for means of complying with those requirements. This memo is supplemental to, but does not supercede or amend the *CEQA Guidelines*. Unlike the *Guidelines* it is not a regulation. All code citations reference the Public Resources Code unless otherwise noted.

SECTIONS 21083.2 and 21084.1

CEQA and the CEQA Guidelines

The California Environmental Quality Act (CEQA) establishes statutory requirements for the formal review and analysis of projects. The *CEQA Guidelines* have been adopted by the State to guide public agencies in implementing CEQA. CEQA's requirements for addressing impacts on archaeological resources are discussed in detail under Sections 21083.2 and 21084.1 (see Appendix 1 of this paper). Appendix K of the *Guidelines* (or Supplementary Document J of the 1992 printing of the *Guidelines*) offers a suggested method for implementing the requirements of Section 21083.2.

Sections 21083.2 and 21084.1 operate independently to ensure that potential effects on archaeological resources are considered as part of a project's environmental analysis. The latter applies to archaeological sites which are listed on or eligible for listing on the California Register, the former applies to other "unique" archaeological resources. Either of these benchmarks may indicate that a proposal may have a potential adverse effect on archaeological resources.

Initial Study

An initial study must be prepared for projects which are not exempt from CEQA in order to guide the decision whether to prepare either a Negative Declaration or EIR (*Guidelines* Section 15063). The original determination whether to prepare a Negative Declaration or an EIR is subject to the "fair argument" test (*Laurel Heights Improvement Assoc. v. U.C. Regents* (1993) 47 Cal.3d 376). In other words, if a fair argument can be raised on the basis of "substantial evidence" in the record that the project may have a significant adverse environmental impact, in this case that unique archaeological resources or archaeological sites that are historical resources would be affected, then an EIR is required even if evidence also exists to the contrary.

Section 21083.2 explicitly requires that the initial study examine whether the project may have a significant adverse effect on "unique archaeological resources." Pursuant to Part (g) of that section, a unique archaeological resource is:

"an archaeological artifact, object, or site, about which it can be *clearly demonstrated*

that, without merely adding to the current body of knowledge, there is a *high probability* that it meets any of the following criteria:

“(1) Contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information.

“(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

“(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.” [emphasis added]

In the one court case to address this definition, the Court of Appeal applied it strictly in finding that “[a]n archaeological artifact, object, or site which does not meet these criteria is a nonunique archaeological resource and ‘need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.’” (*Topanga Association for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348)

Appendix K of the *Guidelines* takes a broader approach, using the term “important” in place of “unique.” Appendix K goes beyond Section 21083.2, suggesting additional criteria to guide the Lead Agency in making a determination of uniqueness. These include that the resource be at least 100 years old and possess “substantial stratigraphic integrity” (i.e., is substantially undisturbed); and the resource involves “important” research questions that historical research has shown can be answered only with archaeological methods.

Section 21084.1 requires an initial study to treat any substantial adverse change in the significance of a historical resource listed in or eligible to be listed in the California Register as a significant effect on the environment. The definition of “historical resource” includes archaeological resources listed in or formally determined eligible for listing in the California Register and, by reference, the National Register of Historic Places, California Historical Landmarks, Points of Historical Interest, and local registers (Sections 5020.1(j) and 5024.1).

If such an effect may occur, the Lead Agency must prepare an EIR. If there is no substantial

evidence in the record for the occurrence of such effect, or if the potential effect can be reduced to a level of insignificance through project revisions, a Negative Declaration or mitigated Negative Declaration can be adopted. The Lead Agency must note the source or content of the data relied upon in preparing the initial study (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Supporting information may include specific studies, or references to previous environmental documents or other information sources. A thorough, referenced initial study is a crucial part of the record supporting the Lead Agency’s determination to prepare a Negative Declaration or mitigated Negative Declaration. Bear in mind, of course, that an initial study is not required to provide the full-blown analysis of a complete EIR (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337).

Pursuant to Sections 21083.2 and 21084.1, neither an EIR nor a Negative Declaration is required for a project which would impact only non-unique archaeological resources or archaeological sites that are not considered “historical resources” pursuant to Section 5020.1(j). Furthermore, an EIR that is required as a consequence of other significant environmental effects is not required to address non-unique archaeological resources.

Site Evaluation

The effectiveness of the initial study depends largely upon an accurate evaluation of the site’s potential archaeological significance. This means determining whether there is present a unique archaeological resource (Section 21083.2) or a historical resource that is an archaeological resource (Section 21084.1).

The “unique” criterion established by Section 21083.1 is narrower and more restrictive than general, professionally accepted criteria by which the significance of an archaeological site would be evaluated. Establishing that a site is or is not “unique” may involve extensive research, analysis, field testing, and excavation. In practice, ascertaining that a significant archaeological site is not unique and therefore not subject to CEQA may involve more research, analysis, and testing than

would be necessary if the resource were a significant historical resource and mitigated. This is particularly true when avoidance is a feasible alternative.

A record search to determine whether any previously identified resources exist on site is the first step in determining whether there may be archaeological resources present. Often, when the applicant submits environmental information with their project the Lead Agency requires that this include the results of a record search at the applicable California Historical Resources File System Information Center (formerly the Archaeological Information Centers). These 11 regional centers maintain the State Archaeological Inventory as part of the Historical Resources File System. This system maintains current information on recorded archaeological sites, as well as resources listed on the California Register of Historic Resources. Alternatively, the Lead Agency itself may undertake this record search during the initial study phase of project review.

Additional sources of information on the possible presence and value of archaeological resources are colleges and universities with archaeology departments, the local historical or archaeological society, local Native American groups, or appropriate archives and repositories. Also, the Native American Heritage Commission maintains a file of Sacred Lands which contain information unavailable elsewhere. The Commission can be contacted at:

915 Capitol Mall, Room 364
Sacramento, CA 95814
(916) 653-4082

Some cities and counties have mapped areas of known archaeological sensitivity. These maps may be used as general indicators of the presence of archaeological resources, but are usually not detailed enough or current enough to be definitive. Sensitivity maps do not substitute for a record search, or archaeological field survey where necessary.

If the project area is expected to contain unique archaeological sites or historical resources that are archaeological resources, the Lead Agency should require a field survey by a qualified professional

archaeologist in order to assess the significance of the resource. Certification by the Society of Professional Archaeologists (SOPA) is one indicator that an archaeologist is qualified. The State of California does not license or certify archaeologists.

Where field survey results are inconclusive, a test excavation of some type may be necessary to determine whether unique, subsurface components exist. When a unique resource is found, the archaeologist should recommend means of avoiding or mitigating impacts, including excavation plans if necessary. In such cases, the archaeologist's report should also estimate the cost of mitigation.

In order to protect the sites from unauthorized excavation, looting, or vandalism, the Lead Agency should not publicize the location of known archaeological resources beyond what is necessary. Records in the Information Centers are exempt from the California Public Records Act (Government Code Section 6250 et seq.). Government Code Section 6254.19 states that "nothing in this chapter requires disclosure of records that relate to archaeological sites information maintained by the Department of Parks and Recreation, the State Historical Resources Commission, or the State Lands Commission." Along this line, Government Code Section 6254 explicitly authorizes public agencies to withhold information from the public relating to "Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission."

The State Office of Historic Preservation can provide additional assistance regarding archaeological resources. The Office can be contacted at:

1416 Ninth Street
Sacramento, CA 95814
(916) 653-6624

For examples of local guidelines for researching archaeological data, see Appendix 4. Appendix 3 lists the Historical Resources File System Information Centers across the State.

Mitigation

CEQA requires the Lead Agency to examine and impose mitigation measures or feasible project alternatives that would avoid or minimize any impacts or potential impacts identified in an EIR or a mitigated Negative Declaration.

When archaeological resources are involved, avoidance, or preservation in an undisturbed state is the preferable course of action. Section 21083.2 provides that preservation methods may include:

- 1 Planning construction to avoid archaeological sites.
- 2 Deeding sites into permanent conservation easements.
- 3 Capping or covering sites with a layer of soil before building on the sites.
- 4 Planning parks, greenspace, or other open space to incorporate archaeological sites.

Actual preservation measures may vary, depending upon the specific situation. For instance, capping or covering sites with soil may not be a practical solution where it might interfere with later carbon-14 or pollen dating procedures.

When avoidance is not possible, excavation may be the only feasible alternative or mitigation measure. Section 21083.2 limits excavation to those parts of the site which would otherwise be damaged or destroyed by the project. Excavation is not required if the Lead Agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource. This information must be documented in the EIR.

Part V of Appendix K suggests that any necessary excavation should be based upon an excavation plan or “research design.” The contents of such a plan might include, but are not limited to:

- 1 A brief summary of the excavation proposed as part of the mitigation plan.
- 2 A list and discussion of important information the excavated resources contain or are likely to contain.
- 3 An explanation of how the information should be recovered to be useful in addressing scientifically valid research questions.

- 4 An explanation of the methods of analysis.
- 5 A final report for distribution.
- 6 An estimate of the cost of and time required to complete the excavation proposed under the plan.
- 7 Plans for the curation of collected materials.

An excavation plan should be prepared by a qualified archaeologist. Unless special or unusual circumstances warrant a longer period, Section 21083.2 requires that the field excavation phase of an approved mitigation plan must be completed within 90 days of final approval. Where a phased project is involved, the excavation must be completed within 90 days of the final approval of the phase to which the mitigation measures apply. The project applicant may allow additional time at their discretion.

Mitigation Monitoring and Reporting

Section 21081.6 requires a public agency to adopt a mitigation monitoring and reporting program whenever it makes a finding of significance under subdivision (a) of Section 21081 (also *CEQA Guidelines* Section 15091(a)(1)) or adopts a mitigated Negative Declaration. This clearly applies to any EIR or mitigated Negative Declaration which identifies adverse effects or potentially adverse effects on unique archaeological resources or historical resources.

The purpose of the mitigation monitoring and reporting program is to ensure that mitigation measures such as avoiding sites during construction, following an excavation plan, or halting construction when resources are discovered, are complied with during project implementation. Where unique archaeological resources or historical resources are involved, continuous monitoring may be necessary during development. OPR’s advisory memo entitled *Tracking CEQA Mitigation Measures Under AB 3180* discusses monitoring and reporting programs in detail.

Applicant Contributions

Section 21083.2 requires the applicant for a qualifying project to guarantee to the Lead Agency that the applicant will pay one-half the estimated

cost of mitigating the project's effects on the resource. When determining the applicant's share, consideration must be given to the in-kind value of "project design or expenditures" that permit any or all the unique archaeological resource to be preserved in place or left undisturbed. The estimated cost of mitigation, other than avoidance or leaving the resource in an undisturbed state, should be included in the EIR.

The project applicant's share of mitigation funding is limited by statute to the following amounts:

- 1** For commercial or industrial projects, an amount equal to one-half of one percent of the projected cost of the project for mitigation measures undertaken within the site boundaries.
- 2** For a single residential unit, an amount equal to three-fourths of one percent of the projected cost of the project for mitigation measures undertaken within the site boundaries.
- 3** For a residential project of more than one unit, an amount equal to three-fourths of one percent of the projected cost of the project for mitigation measures undertaken within the site boundaries for the first unit plus the sum of the following:
 - a** \$200 per unit for any of the next 99 units.
 - b** \$150 per unit for any of the next 400 units.
 - c** \$100 per unit in excess of 500 units.

When a final decision is made on the project, the Lead Agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the applicant and any other sources. Where such reduction results in a significant effect not being reduced to a level of insignificance, the Lead Agency must adopt findings of overriding consideration pursuant to *Guidelines* Section 15093.

Human Remains

The disposition of Native American burials (human remains) are governed by the provisions of Sections 5097.94 and 5097.98, and fall within the jurisdiction of the Native American Heritage Commission. Where human remains are known,

or thought likely to exist, consultation with the Native American Heritage Commission should be initiated by the Lead Agency as early in the project planning process as possible. The Commission has statutory authority to mediate agreements relative to the disposition of Native American remains. These agreements are not subject to CEQA.

The location of old grave sites and Native American remains are often not known in advance. Appendix K suggests a specific procedure for dealing with the unexpected discovery of human remains. (Part VIII of Appendix K) If human remains are discovered, the County Coroner must be notified within 48 hours. There should be no further disturbance to the site where the remains were found. If the remains are Native American, the coroner is responsible for contacting the Native American Heritage Commission within 24 hours. The Commission, pursuant to Section 5097.98, will immediately notify those persons it believes to be most likely to be descended from the deceased Native American.

Accidental Discoveries

CEQA authorizes, but does not require, a Lead Agency to adopt provisions in the agency's own CEQA guidelines for responding to the accidental discovery of archaeological resources during construction. A number of jurisdictions have done this, including Santa Barbara County. These measures may include, but are not limited to, the following:

- 1** Requirements for the immediate evaluation of the find.
- 2** Provisions for contingency funding and a time allotment sufficient to either allow excavation and recovery of an archaeological sample, or to employ measures which would avoid the site of the resource without disturbing it.
- 3** The stopping of construction work on that portion of the site where an archaeological or historical resource was discovered.

SECTION 21083.2 EXCEPTION

Pursuant to its subdivision (j), the requirements of Section 21083.2, including limits on the applicant's share of the cost of mitigation, may be waived for the following:

- 1 A public agency project, if the Lead Agency elects to comply with all other applicable provisions of CEQA.
- 2 A project undertaken by a person that is supported in whole or in part through contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies, if the Lead Agency elects to comply with all other applicable provisions of CEQA.
- 3 A public agency's consideration of a private project, if the applicant and the Lead Agency jointly elect to comply with all other applicable provisions of CEQA. A private project cannot be excepted from Section 21083.2 without the applicant's consent.

When Section 21083.2 does not apply, a substantial adverse change in *any* archaeological resource should be considered a significant effect on the environment. Therefore, the project's initial study must address the potential for significant impacts relative to any significant archaeological resource (not simply the "unique resources" defined under Section 21083.2), as well as any archaeological resource that is also a historical resource pursuant to Section 21084.1.

The majority of sub-surface archaeological sites derive their significance from their informa-

tion potential, that is, the ability to yield important information which contributes to our understanding of history and pre-history. Any action, such as clearing, scraping, soil removal, mechanical excavation or digging that would alter or destroy a site's integrity (i.e., intactness), stratigraphy, or association has the potential to be a significant adverse impact.

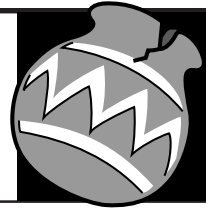
For purposes of CEQA, "environment" is defined to include: "the physical conditions which exist within the area which will be affected by the proposed project, including ... objects of historic or aesthetic significance" (Section 21060.5). This includes archaeological sites (*Society of California Archaeology v. Butte County* (1977) 65 Cal.App.3d 832).

Mitigation Measures

Although the specific mitigation provisions of Section 21083.2 do not apply, the applicant and Lead Agency may use them as a general guide to mitigation. If an archaeological survey and report is required for the project, it should recommend specific measures to mitigate the significant effect identified in the report. These recommendations should form the basis for mitigation measures or alternatives in the EIR for the project. If the project is approved on the basis of an EIR or mitigated Negative Declaration, the Lead Agency must adopt a mitigation monitoring and reporting program as required under Section 21081.6.

Appendix 1

Excerpts from the Public Resources Code



Excerpts from Section 5020.1:

- (j) "Historical resource" includes, but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic agricultural, educational, social, political, military, or cultural annals of California.
- (k) "Local register of historic resources" means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.
- (q) "Substantial adverse change" means demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired.

Excerpt from Section 5024.1:

- (g) A resource identified as significant in an historical resource survey may be listed in the California Register if the survey meets all of the following criteria:
 - (1) The survey has been or will be included in the State Historic Resources Inventory.
 - (2) The survey and the survey documentation were prepared in accordance with office procedures and requirements.
 - (3) The resource is evaluated and determined by the office [of Historic Preservation] to have a significance rating of Category 1 to 5 on DPR Form 523.
 - (4) If the survey is five or more years old at the time of its nomination for inclusion in the California Registry, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the

Section 21083.2:

21083.2. (a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological re-

sources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

- (b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:
 - (1) Planning construction to avoid archaeological sites.
 - (2) Deeding archaeological sites into permanent conservation easements.
 - (3) Capping or covering archaeological sites with a layer of soil before building on the sites.
 - (4) Planning parks, greenspace, or other open space to incorporate archaeological sites.
- (c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.
- (d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately re-

covered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

- (e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:
 - (1) An amount equal to one-half of 1 percent of the project cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.
 - (2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.
 - (3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation undertaken within the site boundaries of the project for the first unit plus the sum of the following:
 - (A) Two hundred dollars (\$200) per unit for any of the next 99 units.
 - (B) One hundred fifty dollars (\$150) per unit for any of the next 400 units.
 - (C) One hundred dollars (\$100) per unit in excess of 500 units.
- (f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.
- (g) As used in this section, “unique archaeological resource” means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:
 - (1) Contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information.
 - (2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.
 - (3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.
- (h) As used in this section, “nonunique archaeological resource” means an archaeological artifact, object, or site

which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than simple recording of its existence by the lead agency if it so elects.

- (i) As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.
- (j) This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.
- (k) Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.
- (l) Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

Section 21084.1:

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subsection (k) of Section 5020.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

Appendix 2

Appendix K of the CEQA Guidelines



- I. CEQA applies to effects on historic and prehistoric archaeological resources.
- II. Public agencies should seek to avoid damaging effects on an archaeological resource whenever feasible. If avoidance is not feasible, the importance of the site shall be evaluated using the criteria outlined in Section III.
 - A. In-situ preservation of a site is the preferred manner of avoiding damage to archaeological resources. Preserving the site is more important than preserving the artifacts alone because the relationship of the artifacts to each other in the site provides valuable information that can be lost when the artifacts are removed. Further, preserving the site keeps it available for more sophisticated future research methods. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.
 - B. Avoiding damage may be accomplished by many approaches, including:
 1. Planning construction to miss archaeological sites;
 2. Planning parks, greenspace, or other open space to incorporate archaeological sites;
 3. "Capping" or covering archaeological sites with a layer of soil before building tennis courts, parking lots, or similar facilities. Capping may be used where:
 - a. The soils to be covered will not suffer serious compaction;
 - b. The covering materials are not chemically active;
 - c. The site is one in which the natural processes of deterioration have been effectively arrested; and
 - d. The site has been recorded.
 4. Deeding archaeological sites into permanent conservation easements.
- III. If the Lead Agency determines that a project may affect an archaeological resource, the agency shall determine whether the effect may be a significant effect on the environment. If the project may cause damage to an important archaeological resource, the project may have a significant effect on the environment. For the purposes of CEQA, and "important archaeological resource" is one which:
 - A. Is associated with an event or person of:
 1. Recognized significance in California or American history, or
 2. Recognized scientific importance in prehistory.
 - B. Can provide information which is both of demonstrable public interest and useful in addressing scientifically consequential and reasonable or archaeological research questions;
 - C. Has a special or particular quality such as oldest, best example, largest, or last surviving example of its kind;
 - D. Is at least 100 years old and possesses substantial stratigraphic integrity; or
 - E. Involves important research questions that historical research has shown can be answered only with archaeological methods.
- IV. If an archaeological resource is not an important archaeological resource, both the resource and the effect on it shall be noted in the Initial Study or EIR but need not be considered further in the CEQA process.
- V. If avoidance of the important archaeological resource is not feasible, the Lead Agency should include an excavation plan for mitigating the effect of the project on the qualities which make the resource important under Section III.
 - A. If an excavation plan is prepared, it shall:
 1. Be a brief summary of the excavation proposed as part of a mitigation plan;
 2. Be available for review only a need-to-know basis;
 3. Not include the specific location of any archaeological resources if the plan will be made known to the general public.
 - B. An excavation plan may:
 1. List and briefly discuss the important information the archaeological resources contain or are likely to contain;
 2. Explain how the information should be recovered to be useful in addressing scientifically valid research questions and other concerns identified in subdivision (a);
 3. Explain the methods of analysis and, if feasible, display of excavated materials;
 4. Provide for final report preparation and distribution; and
 5. Explain the estimated cost of and time required to complete all activities undertaken under the plan.

- C. The Lead Agency may require a mitigation plan to be carried out as a condition of approval of the project.
- VI. A public agency following the federal clearance process under the National Historic Preservation Act or the National Environmental Policy Act may use the documentation prepared under the federal guidelines in the place of documentation called for in this appendix.

VII. Limitations on Mitigation

Special rules apply to mitigating significant effects on important archaeological resources.

- A. If it is not feasible to revise the project to avoid an important archaeological resource, the Lead Agency shall require the project applicant to guarantee to pay one half of the cost of mitigating the significant effect of the project on important archaeological resources.
 - 1. In determining the payment to be required from the applicant, the Lead Agency shall consider the in-kind value of project design or expenditures intended to permit any or all important archaeological resources or California Native American culturally significant sites to be undisturbed or preserved in place.
 - a. Consideration of in-kind values does not require a dollar for dollar set-off against the payment by the project applicant.
 - b. In deciding on an appropriate set-off, the Lead Agency shall consider such factors as whether the project design or expenditures would provide other benefits to the applicant and whether the design or expenditures required special changes in the project plans.
 - 2. When it decides to carry out or approve the project, the Lead Agency shall, if necessary, reduce the mitigation measures specified in the EIR to those which can be funded with:
 - a. The money guaranteed by the project applicant, and
 - b. Money voluntarily guaranteed by any other person or persons for the mitigation.
 - 3. In order to allow time for interested persons to provide a voluntary funding guarantee, the Lead Agency shall not decide to carry out or approve a project having a significant effect on important archaeological resources until 60 days after completing the final EIR on the project.
 - 4. In no event shall the Lead Agency require the applicant to pay more for mitigation within the site of the project than the following amounts:

- a. One half of one percent of the projected cost of the project, if the project is a commercial or industrial project.
 - b. Three fourths of one percent of the projected cost of the project for a housing project consisting of one unit.
 - c. If a housing project consists of more than one unit, three fourths of one percent of the projected cost of the first unit plus the sum of the following:
 - (i) \$200 per unit for any of the next 99 units,
 - (ii) \$150 per unit for any of the next 400 units,
 - (iii) \$100 per unit for units in excess of 500.
- B. Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after the applicant receives the final approval necessary to begin physical development of the project.
 - 1. With a phased project, the mitigation measures shall be completed within 90 days after approval is granted for the phased portion to which the specific mitigation measures apply.
 - 2. The project applicant can elect to extend the time limits for completing the field excavation phase of the approved mitigation plan.
 - 3. A mitigation plan shall not authorize violation of any law protecting American Indian cemeteries.
- C. Excavation as part of a mitigation plan shall be restricted to those parts of an important archaeological resource that would be damaged or destroyed by the project unless special circumstances require limited excavation of an immediately adjacent area in order to develop important information about the part of the resource that would be destroyed.
- D. Excavation as mitigation shall not be required for an important archaeological resource if the Lead Agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, provided that the determination is documented in the EIR.
- E. The limitations on mitigation shall not apply to:
 - 1. A public project if the Lead Agency decides to comply with other provisions of CEQA that apply to mitigation of significant effects, and
 - 2. A private project if the applicant and the Lead Agency jointly elect to comply with other provisions of CEQA that apply to mitigation of significant effects.
- F. The time and cost limitations described in this section do not apply to surveys and site evaluation

activities intended to determine whether the project location contains archaeological resources, and if so, whether the archaeological resources are important as defined in this appendix.

VIII. Discovery of Human Remains

- A. In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:
 1. The coroner of the county in which the remains are discovered has been informed and has determined that no investigation of the cause of death is required, and
 2. If remains are of Native American origin,
 - a. The descendants from the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or
 - b. The Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission.
- B. Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.
 1. The Native American Heritage Commission is unable to identify a descendant;
 2. The descendant identified fails to make a recommendation; or
 3. The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.
- C. If the human remains are discovered before the Lead Agency has finished the CEQA process, the Lead Agency shall work with the Native American Heritage Commission and the applicant to develop an agreement for treating or disposing, with appropriate dignity, of the human remains and any associated grave goods. Action implementing such an agreement is exempt from:
 1. The general prohibition on disintering, disturbing, or removing human remains from any lo-

cation other than a dedicated cemetery (Health and Safety Code Section 7050.5).

2. The requirements of CEQA and the Coastal Act.

- IX. As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a Lead Agency should make provisions for archaeological sites accidentally discovered during construction. These provisions should include an immediate evaluation of the find. If the find is determined to be an important archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures should be available. Construction work could continue on other parts of the building site while archaeological mitigation takes place.

Note:

Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 7050.5, Health and Safety Code; Sections 5097.98, 21001(b) and (c), and 21083.2, Public Resources Code; *Society for California Archaeology v. County of Butte*, (1977) 65 Cal. App. 3d 832.

Discussion:

This appendix responds to problems that have arisen in applying CEQA to archaeological resources. In some areas of the state, full excavations of archaeological sites have been required for nearly every site discovered within the tract where a project would be located regardless of the importance of the sites. As a result, federal officials have noted that in CEQA documents they have found descriptions of archaeological excavations of sites that would not be regarded as important enough to call for excavation under federal law. This experience has shown a need for establishing standards to guide agencies in deciding whether a site would be important enough to call for analysis under CEQA.

While there have been problems in some parts of the state, archaeological impacts have been handled well in other areas. Mendocino County and Santa Barbara County especially have been noted for the excellence of their methods for dealing with archaeological resources. This appendix does not mandate a uniform system statewide so that successful local programs can continue.

The unnecessarily large number of excavations has also involved an unnecessary conflict with Native American values. Native Americans have been upset by people digging up the remains of their ancestors. While archaeology can be carried out in conjunction with Native Americans, and has been done successfully to help Native Americans learn about their ancestors, too often excavations have been carried out without concern for the sensitivities of Native Americans. The approaches described in this appendix should reduce the conflict with Native American values concerning protection of burial sites.

An important principle in this appendix is the emphasis on avoidance of archaeological sites. Avoidance is discussed as a way of avoiding a significant impact in the first place, thereby enabling a project to qualify for a Negative Declaration. Where the proposed project includes a potential impact on a site, avoidance is suggested as a preferred mitigation measure where all other factors are equal. If a project can be altered to avoid a site, the costs and delays involved in an archaeological excavation may also be avoided, and there would be no interference with Native American sensitivities. Possible methods of avoidance are listed in order to give people ideas of how to proceed. These methods are not exclusive and could be supplemented by other methods at the option of the Lead Agency.

The appendix also identifies standards for determining the importance of the archaeological site and provides that a project would have a significant effect on the environment if it would cause damage to an important archaeological site. These standards are in keeping with the efforts in CEQA to focus on significant effects rather than on all effects. The standards are an effort to focus on archaeological resources that people would generally agree are important rather than requiring protection of all archaeological resources. The standards are consistent with the standards included in AB 952 (Deddeh), Chapter 1623 of the Statutes of 1982. The appendix uses the term “important” archaeological resources rather than “unique” archaeological resources in order to use terminology more closely related to accepted scientific usage. The substance of the standards remains consistent with the bill despite the change in label.

The appendix encourages the preparation of an excavation plan in an EIR as one of several possible mitigation measures for destruction or damage to an archaeological site. The excavation plan is an effort to achieve greater precision in the ways in which any necessary excavation would be carried out. The excavation plan would put a burden on the archaeologist to explain the importance of the site and to demonstrate how the proposed excavation would serve some public interest. The elements listed for an excavation

plan are suggested but not required. This approach allows Lead Agencies to take various approaches in excavation plans. The plans are intended to shift the burden to the archaeologist to demonstrate the necessity for an excavation rather than requiring a staff worker in the Lead Agency to deal with unfocused claims of the importance of the site. The Resources Agency has received information suggesting that planners working for Lead Agencies have had difficulty in evaluating claims from expert archaeologists demanding that excavation be allowed. The excavation plan requirement is designed to alleviate that problem.

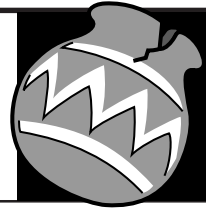
To conform to the recently enacted Assembly Bill 952, Chapter 1623 of the Statutes of 1982, the appendix identifies various restrictions on archaeological mitigation and cost limitations on archaeological mitigation. These restrictions apply to the CEQA process, and people implementing the Act need to be made aware of them. The appendix reorganizes and clarifies the limitations and adds interpretations with a few subjects from the bill such as offsets and the 60-day delay in approval after completing the EIR.

The appendix also suggests ways for Lead Agencies to standardize their methods of dealing with archaeological resources. The methods could be included within mitigation measures in EIRs or included in the CEQA procedures which an agency is required to adopt by Section 21082 of the Public Resources Code. The appendix also encourages Lead Agencies to deal with the problem of unexpected sites which may be discovered during construction. The appendix does not mandate any particular way to deal with this situation.

The appendix also reflects the protections recently enacted in Senate Bill 297 (Garamendi), Chapter 1492 of the Statutes of 1982, for human remains discovered during excavation. If the human remains are of Native American origin, special rules and procedures apply. The rules and procedures are included here because they are so closely related to the archaeological activities discussed in this appendix.

Appendix 3

Historical Resources Information Centers



The following institutions are under agreement with the Office of Historic Preservation to:

1. Integrate newly discovered Resources and information on known Resources into the California Historical Resources File System;
2. Supply information on known Resources and surveys to government, institutions, and individuals who have a justifiable need to know; and
3. Supply a list of consultants who are qualified to do archeological field work within their area.

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Ms. Jan Wooley, Staff Historian, (916) 653-9019

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